

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	
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)	
CHEMICAL RECOVERY SYSTEMS, INC.)	
142 Locust Street, Elyria, Ohio 44305)	
CERCLIS ID# OHD 057 001 810)	
)	
RESPONDENTS)	
See Attachments)	
)	
Proceeding Under Sections 104, 122(a),)	U.S. EPA Docket No.
and 122(d)(3) of the Comprehensive)	
Environmental Response, Compensation,)	
and Liability Act as amended)	
(42 U.S.C §§ 9604, 9622(a),)	
9622(d)(3)).)	

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (U.S. EPA) and the Respondents listed in Attachment A. Attachment A is hereby wholly incorporated by reference into this Consent Order. The Consent Order concerns the preparation of, performance of, and reimbursement for all oversight costs incurred by U.S. EPA in connection with a remedial investigation and feasibility study (RI/FS) at the Chemical Recovery Systems, Inc. Site, located at 142 Locust Street, Lorain County, Elyria, Ohio ("Site").

II. JURISDICTION

2. This Consent Order is issued under the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9604, 9622(a), 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators on September 13, 1987, by U.S. EPA Delegation No. 14-14-C. This authority has been re-delegated by Region 5's Administrator to the Director, Superfund Division, Region 5 on May 2, 1996.

3. The Respondents agree to undertake all actions required by the terms and conditions of this Consent Order. In any action by U.S. EPA or the United States to enforce the terms of this Consent Order, Respondents consent to and agree not to contest the authority or jurisdiction of the Director, Superfund Division, Region 5 to issue or enforce this Consent Order, and agree not to contest the validity of this Consent Order or its terms.

III. PARTIES BOUND

4. This Consent Order will apply to and be binding upon U.S. EPA and will be binding upon the Respondents, their agents,

successors, assigns, officers, directors and principals. Respondent's officers, directors and principals shall be bound only in their official capacity as officers, directors and principals of Respondents and not in their personal capacity. Respondents are listed in Attachment A, which is wholly incorporated by reference into this Consent Order. Without admitting any liability whatsoever for the Site, Respondents agree to be jointly and severally responsible for carrying out all actions required of them by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondents or of the facility or Site will alter Respondents' responsibilities under this Consent Order.

5. The Respondents will provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents will provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents will condition

any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

IV. STATEMENT OF PURPOSE

6. In entering into this Consent Order, the objectives of U.S. EPA and the Respondents are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site or facility, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a feasibility study; and (c) to recover oversight costs incurred by U.S. EPA with respect to this Consent Order.

7. The activities conducted under this Consent Order are subject to review, comment and approval by U.S. EPA and will provide all appropriate necessary information for the RI/FS at

this Site, and for a record of decision that is consistent with CERCLA and the National Contingency Plan (NCP), 40 C.F.R. Part 300. The activities required under this Consent Order will be conducted in compliance with all applicable U.S. EPA guidance, policies, and procedures and, if successfully completed, will be consistent with the NCP.

V. FINDINGS OF FACT

8. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Order only, the Respondents stipulate that the factual statutory prerequisites under CERCLA necessary for issuance of this Order have been met. U.S. EPA's finding is based on the following specific findings which U.S. EPA asserts as facts:

9. The Site is approximately four (4) acres (with several lots within the 4 acres), and is located at 142 Locust Street (formerly Maple Street) in a predominantly commercial/industrial area near the central business district of the city of Elyria, in Lorain County, Ohio. The Site occupies a part of a peninsula jutting into the Black River. The western boundary of the Site runs along the bank of the East Branch of the Black River ("River"), the northern boundary adjoins property owned by the Englehard Chemical Company (formerly

Harshaw Chemicals), the eastern boundary runs along Locust Street and Englehard Chemical Company, and the Site's southern boundary adjoins the property of M&M Aluminum Siding. Presently, Mrs. Dorothy Obitts owns the Site. She leases it to the M&M Aluminum Siding Company. The Site is presently used for storage purposes. Two buildings remain on Site; located in the southeast corner of the Site is a combination warehouse/office building, and a Rodney Hunt Still building. The foundation from the former Brighton Still building is located in the northwest corner. Two sumps located inside of the still buildings allegedly were used to dispose of waste. One of the sumps located in the shell of the Rodney Hunt building is easily identified. Information regarding the construction of these sumps or where the collected waste from the sumps were disposed of is unknown. The Site is fenced in on all sides except for the side bordering the River, which is overgrown by heavy vegetation.

10. The demographics of the Site have been identified by U. S. EPA (Oct. 25, 1999). The Site is located in an Environmental Justice (EJ) Community, (Census Tract 0708, Block Group 1, Population 73, Low income 91.8%, Minority 0.00%). Region 5's EJ community is identified as a block group, usually within a one (1) mile radius of the Site with a low-income or minority population percentage of the block group having either

a low-income or minority percentage greater than or equal to two (2) times the State's average. Region 5's EJ Criteria for the State of Ohio (State): Minority 13% or greater, Low-income 60% or greater.

11. U.S. EPA's prior investigation indicates that in 1960, Russell Obitts began the solvent reclamation operations at the Site by leasing the lots which comprise the Site. Owners of these lots who leased to Obitts included Franklin Payne and Irene Payne (lot 519); Robert Altfeld *et al.*, and F.H. Payne Co. (lot 520 and south half of lot 521); Carl P. Swiers (north half of lot 521 and lot 522). A few years later Russell Obitts and his wife, Dorothy, purchased some but not all of these lots (all except lot 519). All of these lots (519, 520, 521 and 522) were purchased in 1975 by Chemical Recovery Systems.

12. U.S. EPA's prior investigation of the site indicates that from 1960 through 1974, Russell Obitts formed and operated two companies, Obitts Chemical Services and Obitts Chemical Company. The former operated as a solvent reclamation facility, the latter sold solvents to industry. Obitts obtained used, "scrap" or "spent" organic solvents from various companies. After distilling away the impurities in the "dirty" solvents, the "cleaned" reclaimed solvents were repackaged and sold. The solvents were transported to and from the Site in 55-gallon drums or by tanker trucks. The collected spent solvents

were transferred to above ground storage tanks (ASTs) on the Site. Nine ASTs with a capacity of 53,000 gallons were known to have been situated on the Site. (CHED 1979a). The types of solvents known to be reclaimed at the facility during its operation included but may not be limited to: acetone, hexane, isopropyl alcohol, tetrachloroethene (PCE), toluene, methylene chloride, methyl ethyl ketone, xylene, and various paint thinners and solvents. The Obitts operations at the Site were plagued by a history of fires, explosions, leaks, spills, and overturned tankers. Many of these incidents have been documented by photographs, witness statements, affidavits and local fire marshal reports.

13. U.S. EPA's prior investigation of the Site further indicates that in 1974, Chemical Recovery Systems (CRS) assumed operation of the Site through a stock purchase agreement with the Obitts Chemical Company. In a separate agreement, CRS leased the lots on the peninsula west of Locust Street from Dorothy Obitts, with an option to purchase. Later, CRS exercised its purchase option. Still later, CRS defaulted on payment for the property, and Dorothy Obitts re-assumed uncontested ownership following a legal action. On August 12, 1991, Russell Obitts died.

14. U.S. EPA's prior investigation of the Site indicates that from 1974 to 1981 CRS continued in the business

of solvent reclamation. The solvents continued to be stored in 55-gallon drums, ASTs and tanker trucks waiting to be cleaned on Site. The number of 55-gallon drums used for "dirty" solvent storage numbered between 4,000-9,000. Operational problems included improper construction of the ASTs and deteriorating and leaking conditions of many of the drums. Frequent spills and releases were documented.

15. In August 1978 and April 1980, Ohio Environmental Protection Agency (Ohio EPA), Northeastern District Office documented releases of chemicals from the CRS Site to the East Branch of the Black River. Concerns about these releases into the Black River, and the potentially dangerous conditions on-site frequently documented by the local Fire Marshall, led U.S. EPA to bring suit against CRS in 1980, requiring the facility owners to abate problems identified at the Site.

16. On October 7, 1980, U.S. EPA filed a complaint alleging violations of Sections 7003 of the Resource Conservation and Recovery Act (RCRA) and 301 (a) of the Clean Water Act (CWA). The two principal concerns cited in the complaint were the threat of fire and explosion posed by the presence of approximately 4000 drums of chemical waste on the Site and the presence of defective distillation units. The second complaint alleged that a leachate stream containing PCBs was running down the bank of the CRS Site property, discharging

into the East Branch of the Black River. A boom in the River isolated some of the contaminants including PCBs and organic chemicals.

17. Some time prior to August 1981, before the Hydrogeological and Extent of Contamination Study (FIT Study) was performed by U.S. EPA's Field Investigation Team, Ecology & Environment (E&E), Inc., CRS had removed all tanks, drums, and other spent solvent containers from the Site; ceased the receipt, processing and storage of the spent solvents at the Site and removed both distillation units from the Site according to the FIT Study report.

18. In April 1982, U.S. EPA's Field Investigation Team, E&E, reported the results of the Hydrogeologic and Extent of Contamination Study (FIT Study) performed at CRS during August and September of 1981. During the course of the FIT Study, E&E collected samples from the Site's soil, ground water, surface water and sediments. U.S. EPA 1982.

19. Results of the April 1982, Hydrogeologic Study for CRS Site reported that:

- a. an estimated 920,000 gallons of leachate (of unknown quality) were produced each year by precipitation infiltrating the soils.
- b. The flow rate of ground water entering the River was estimated at 59,000 gallons per year.

- c. The velocity of ground water flow was approximately 33ft/yr.
 - d. The ground water flow was to the west, toward the River, with an average gradient of 0.05.
 - e. The interception of ground water by the sewer line under drain caused an increase in the flow rate to the River, and concentrated at the outflow which discharged into the River. U.S. EPA 1982.
20. The results of the April 1982 Geologic Investigation reported that:
- a. The CRS Site is situated on a thin cover of unconsolidated heterogenous, man-made fill, predominantly composed of clay, sand, and gravel (including bricks, cinders, slag, etc).
 - b. The thickness of the unconsolidated materials ranged from four feet near Locust Street to twenty-eight feet at the western portion of the Site near the River.
 - c. The unconsolidated materials are underlain by the Mississippian age Berea Sandstone.
 - d. The bedrock is located ~ four feet below ground surface (bgs) on the eastern side of the Site.
 - e. The bedrock on the western side of the Site near the River ranges between twenty to twenty-eight feet bgs (Herron, 1979).

f. The Berea Sandstone below the fill is generally a source of potable water, oil, and natural gas (Northern Ohio Geologic Survey).

g. The ground water beneath the CRS Site is typically present at ~ ten feet bgs. U.S. EPA 1982.

21. In August and September of 1981, U.S. EPA's FIT contractor, Ecology and Environment (E&E) installed four monitoring wells(MW). MW-1 was installed down gradient to ground water flow, near the former Brighton Still building, in the northwest corner of the Site. MW-2 was installed down gradient to ground water flow, near a former drum storage area, in the southwest corner of the Site. MW-3 and MW-4 were installed up gradient to ground water flow (background wells). The down gradient MW-1 & 2 were installed to determine ground water quality. The following organic compounds were detected at elevated concentrations (all concentrations are reported in parts per billion (ppb)) in monitoring wells at the Site: methylene chloride=71,000, 1,1,1 tri-chloroethane=12,000, trichloroethylene=6,300 1,2 trans dichloroethylene=10,000, benzene=1900, toluene=100,000, ethylbenzene=14,000, phenol=590, PCB 1248=29 PCB-1254=18, and napthalene=130. The same compounds were detected in MW-2, however, at lower concentrations with the exception of vinyl chloride=1000, and benzene=1,900. The 1981 up gradient background MW-3&4 data analysis reported non-detects

from all the organic compounds analyzed. The range of inorganic compounds detected, in 1981, at elevated concentrations, in MW 1&2 were: lead=840-2500 (background sample for lead=580-600), barium=164-2740, cadmium=195-820, beryllium=8-14, copper=670-1700, and arsenic=140-700. U.S. EPA 1982.

22. Four surface water samples were collected from the River in 1981. Only one sample, SW-3, was collected below the outfall of the sewer line, which runs from Locust Street under the Site to the River. Analysis of this sample (SW-3) identified several organic compounds which were not found in the other three surface water samples taken in the vicinity in 1981; these compounds included: chloroform (<10ppb), carbon tetrachloride (<10ppb), dichlorobromomethane (<10ppb), chloroethane (11ppb), vinyl chloride (100ppb), trichloroethylene (1000ppb), benzene (15ppb), toluene (15ppb), 1,3 dichlorobenzene (29ppb), 1,4 dichlorobenzene (37ppb), and naphthalene (<10ppb). Analyses in 1981 did not show conclusive evidence of inorganic contaminants leaching from the CRS Site to the River. U.S. EPA 1982.

23. In August 1981 seventeen soil samples from five(5) soil borings on Site were analyzed to determine the extent of the organic and inorganic contamination. Organic contaminants were found above background at various depths in these samples. One sample showed a general decrease in organic contaminant

concentrations with depth, most likely due to surficial dumping or spillage. Most of the soil samples analyzed reported the concentrations of organic contaminants increased with the sample depth. U.S. EPA 1982.

24. Sediment samples were collected simultaneously with the surface water samples from the River. Of these sediment samples, SS-1 was upstream and considered as background; SS-3 was taken directly below the point where the sewer outfall emerged from below the Site. U.S. EPA 1982.

25. The review of the organic analysis revealed that, in 1981, two groups of chemicals were detected in the sediment.

a. Polycyclic aromatic hydrocarbons (PAHs) were found in 1981, in SS-3, as well as both upstream and downstream samples, in the sediments. They included: chrysene, benzo (k) fluoroanthene, anthracene, fluorene, benzo (a) pyrene and dibenzo (a,h) anthracene.

b. The second group of organic compounds detected in sediments in 1981 included: trichlorofluoromethane, chloroethane, 1,1 dichloroethylene, 1,1,1 trichloroethane, vinyl chloride, benzene, toluene, ethyl benzene, phenol, 1,2,dichlorobenzene, PCBs, several phthalates and naphthalene. The most elevated concentrations of these organic compounds were found in SS-3, located near the sewer outfall. U.S. EPA 1982.

26. The inorganic analyses of the sediment sampling

reported elevated concentrations of cadmium, lead, zinc, copper, and nickel at SS-3, near the sewer outfall. U.S. EPA 1982.

27. The conclusions of the 1981 field investigation performed by E&E were:

a. Soil samples at the Site indicated contamination at various depths with organic chemicals, and were suspected by E&E to be most likely due to the potential sources: sumps, surficial dumping and groundwater contact.

b. Of the twenty-three organic compounds identified in the soils, fifteen of the same compounds were found in the ground water monitoring wells. U.S. EPA 1982.

28. As noted in the Ohio EPA Site Team Prioritization Report (STEP Report) on the CRS Site issued in 1997 (OEPA 1997), on July 12, 1983, a Consent Decree was issued resolving a federal claim brought against CRS in Federal District Court for the Northern District of Ohio, which alleged an imminent and substantial endangerment to human health and the environment and sought relief under Section 7003 of the Resource Conservation and Recovery Act (RCRA). The Consent Decree required CRS to perform the following actions:

a. Excavate all visibly contaminated soil identified during a joint inspection conducted by representatives of U.S. EPA and CRS.

b. Excavate the perimeter of the Brighton Still

building in the northwest corner of the Site to a depth of 1 foot and a distance of 2 feet beyond the perimeter of the foundation.

c. Dispose of all removed soil at a U.S. EPA approved disposal site.

d. Backfill the excavated areas with clean, clay containing fill.

e. Gently grade the Site towards the River. OEPA 1997.

29. Prior to the Field Investigation performed by U.S. EPA contractors E&E during August and September of 1981, CRS apparently removed all tanks, drums and other spent solvent containers from the Site; ceased the receipt, processing, and storage of spent solvents at the Site; removed all distillation units; and demolished all the buildings on the Site except for the warehouse/office building, and a "shell" of the Rodney Hunt Still building. OEPA 1997.

30. At the time of the 1983 Consent Decree, CRS had also secured the Site with a fence, filled in the sumps with concrete located under both still buildings and leveled the dikes on the Site. CRS removed contaminated soil and disposed of the soil in an approved waste disposal site by September 15, 1983. After conducting a Site inspection on November 7, 1983, U.S. EPA concluded that CRS was in compliance with the clean-up

stipulated in the Consent Decree. OEPA 1997.

31. Ohio EPA personnel conducted a Site Team Evaluation Prioritization (STEP) investigation on behalf of U.S. EPA and, following the U.S. EPA Site investigation protocol, collected samples from the Site during August 1996. OEPA 1997.

32. During the STEP investigation, Ohio collected samples from the groundwater, soil, and from the River's surface water and sediments.

33. Previous investigations and reports indicated that four ground water monitoring wells existed for sampling on the Site. However, during the STEP investigation only two wells could be located; these wells were considered to be hydraulically down gradient, and the background wells could not be located, having apparently been destroyed when the Site was graded in 1983. The static water levels, in 1996, in the two wells which were found, ranged between 17.7 feet and 23.5 feet. The following compounds were detected at elevated concentrations (all levels reported in ppb; "J" values are defined as estimated values that are less than the sample quantitation limit, but greater than zero) during the August 1996 sampling event: 1,1 dichloroethane=450J, 1,2 dichloroethene (total)=1400J, toluene=11000, ethylbenzene=4900, styrene=800J, xylene=86,000, phenol=32J, 2 methylphenol=270, di-n-butylphthalate=30J, 4 methylphenol=150, 2,4 dimethylphenol=650, naphthalene=220,

2 methylnaphthalene=12J, vinyl chloride=2J, trichloroethylene=21, tetrachloroethylene=170, Aroclor 1248=2.3, and Aroclor 1254=5.3. OEPA 1997.

34. Several metals and cyanide were detected in all ground water samples; the highest values, reported in ppb, are: arsenic=466, and aluminum=2250, zinc=5270, cyanide=105, lead=105, chromium=137, cadmium=77.3 and barium=244. OEPA 1997.

35. Several organic compounds and metals were detected in 1996 in all the soil samples analyzed from the Site. Due to the inability to find a suitable location to collect background soil samples, none were taken during the August 1996 soil sampling event.

36. The most notable organic compounds detected from the soil sampling event (reported in ppb) were: 1,2 dichloroethene=1400, tetrachloroethene=1200 (in soil sample GH1), 1,1,1 trichloroethane=51J, trichloroethene=19000, tetrachloroethene=5500 (in soil sample GH3), phenanthrene=3400, fluoranthene=6800, pyrene=6900, butylbenzylphthalate =8000, chrysene=3800 and benzo(a)pyrene=5900ppb. OEPA 1997.

37. The metals and cyanide (reported in ppm) detected in Site soils at elevated concentrations were: aluminum= 5210-11,400, lead=56.3-1180, zinc=103-1460, cadmium=1.5-70.3, chromium=9.3-755, arsenic=7.2-71.7, and cyanide=0.6-31.6. OEPA 1997.

38. A total of four surface water samples were collected from the River, including the background sample. The most significant detections (reported in ppb) included vinyl chloride=65, 1,1 dichloroethane=110, 1,2-dichloroethene (total)=130, 1,1,1-trichloroethane=18, ethylbenzene=71, xylenes(total)=19, benzene=19, ethylbenzene =71, and total xylenes=19ppb. OEPA 1997.

39. Three sediment samples plus a duplicate sample were collected in August 1996 from the River. The sampling locations were chosen based on the evaluation of historical data, potential source areas, and Site reconnaissance.

40. The following organic contaminants were detected in the sediment samples (reported in ppb): benzene=34; 2-butanone=4J; ethylbenzene 2J; total xylene=13J; acenaphthylene=62J; 4-nitrophenol=100J; carbazole=200; fluoranthene=2300; butylbenzylphthalate=86J; nitroaniline=240J; and acenaphthene was detected in all samples except the background sample=140J, 78J, and 67J.

41. The following pesticides/PCB were detected in the sediment sample (reported in ppb): endosulfan sulfate=2.7J; aldrin 0.18J; endrin aldehyde=1.6J; gamma-chlordane=3; PCB aroclor-1254=100; and aroclor-1260=16J.

42. The following inorganic contaminants were detected in the sediment samples collected (reported in ppb): aluminum=14,100; chromium=34.8; cobalt=18; lead=53.1; copper=

99.5; barium=146; magnesium=5280; manganese=487; mercury=0.43; nickel=51.4; thallium=0.85; vanadium=29.1; and zinc=198.

43. The 1996 investigations detected elevated Site-related contaminants in all of the environmental media. The five pathways evaluated during the STEP investigation were ground water, surface water, sediments, soil, and air.

44. In terms of the ground water pathway, based on the data collected in 1996 and the analytical results reported in the 1997 STEP report, Ohio EPA believes a high potential exists for ground water contamination to leach into the surface water. The potential for private drinking water supplies to be impacted by the Site is believed to be relatively low because the River acts as a hydraulic barrier between the Site and most down gradient receptors. In the 1997 STEP report, Ohio EPA states the conclusion that the impact to the surface water from the Site needs further investigation through the collection of additional sampling and investigatory work. OEPA 1997.

45. As for the soil pathway, the main source of Site soil contamination appears to have been from seepage due to improper storage and handling of drums, from spills, and from leakage which occurred through improper hose connections to tanks and stills. High concentrations of organic compounds, inorganics and relatively low pesticides/PCBs were detected in the soils on Site and are likely to infiltrate into the ground

water, according to the conclusions drawn in the STEP report. Further investigation will be required to quantify the current and potential future impact of soil contamination on ground water. In 1996, no residences, schools, day care facilities or sensitive populations were located close to the Site. The Site is located in an industrial/commercial area. Only one up gradient resident was located within one mile of the Site. OEPA 1997). The primary potential threat of exposure to the soil is from direct contact to workers or by trespassers who approach the Site from the portion near the River that is not fenced. Additionally the number of employees at M&M Aluminum Siding is unknown.

46. The 1996 OHIO EPA investigation evaluated surface water pathway targets from the probable point of entry (PPE) where the Site runoff enters the River to the Target Distance Limit (TDL) 15 miles downstream where the River enters Lake Erie. Targets evaluated in such investigations typically include surface water intakes that supply drinking water, fisheries, and sensitive environments. From the Site, surface water runoff flows into the East Branch of the Black River and eventually joins with the main branch of the Black River. The Black River flows north by northeast, emptying into Lake Erie. From the PPE to the TDL there are no surface water intakes that supply drinking water. Elywood Park, Cascade Park, and

Washington Park are all located along the Black River and are presently picnic areas only. French Creek Park and Black River Park are also located along the Black River and offer picnic areas, as well as permitted fishing. There were approximately 4 miles of wetlands, in 1996, located in the 15 mile TDL. Federally endangered species--the Bald Eagle and the Indiana Bat--are known inhabitants in Lorain County and may be found in areas along the Black River, within the 15 mile TDL.

47. The sediment pathway sample analysis demonstrated contamination. The OEPA report stated that the impact to the surface water and sediment from the Site needs further investigation through the collection of additional sampling and investigatory work. (OEPA 1997, STEP Report).

48. During the 1981 and 1996 Site investigations, no release of contaminant constituents to the air was documented.

49. Currently, the Site is not listed on the National Priorities List(NPL).

50. Chemical Recovery Systems, Inc., of Ohio, was an owner and operator of the Site.

51. U.S. EPA has completed and issued the following Site-related reports: on April 26, 1982, U.S. EPA completed a Hydrogeologic and Extent of Contamination Field Investigation Study and issued a report (U.S. EPA 1982-FIT Project Report); on August 8, 1995, U.S. EPA issued its Focused Site Inspection

Prioritization Site Evaluation Report.

52. On September 29, 1997, Ohio EPA, having conducted a Site Team Evaluation Prioritization Investigation at the Site, issued a report on the investigation (OEPA 1997, STEP Report).

53. On July 2, 1999, the Agency for Toxic Substances and Disease Registry (ATSDR) with the support of the City of Elyria Health Department completed a Health Consultation which provided information about the potential health effects associated with the Site. The ATSDR concluded that the site "currently poses no apparent public health hazard to area residents. On-site workers could come into contact with low levels of contaminants in surface soils at the CRS property, but currently detected concentrations of those chemicals in the surface soils pose a minimal health hazard to possible workers."

54. Other investigations at various times included possible identification of potential sources of ground water contamination and the development of aerial photographs to map the Site's condition over a period of years.

55. On March 2, 2001, U.S. EPA issued General Notices of Potential Liability and information request under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to Respondents.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

56. The Site is a "facility" as defined in Section

101(9) of CERCLA, 42 U.S.C. § 9601(9).

57. Wastes and constituents thereof at the Site are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute "any pollutant or contaminant," that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

58. The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

59. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

60. Respondents are potentially responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

61. The actions required by this Consent Order, if successfully completed, are necessary to protect the public health or welfare or the environment, or in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

VII. NOTICE

62. By providing a copy of this Consent Order to the State, U.S. EPA is notifying the State of Ohio that this Order is being issued and that U.S. EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

VIII. WORK TO BE PERFORMED

63. All work performed under this Consent Order will be under the direction and supervision of qualified personnel. Within thirty (30) days of the effective date of this Order, and before the work outlined below begins, the Respondents will notify U.S. EPA in writing of the names, titles, and qualifications of the primary personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "U.S. EPA Requirements for Quality Management Plans (QA/R-

2)," (U.S. EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. The qualifications of the persons undertaking the work for Respondents will be subject to U.S. EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to U.S. EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. If U.S. EPA disapproves in writing of any person(s)' technical qualifications, Respondents will notify U.S. EPA of the identity and qualifications of the replacements within thirty (30) days of the written notice. If U.S. EPA subsequently disapproves of the replacement(s)' technical qualifications, U.S. EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents will notify U.S. EPA in writing of any changes or additions in the primary personnel used to carry out such work, providing their names, titles, and qualifications. U.S. EPA will have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

64. Respondents will conduct activities and submit deliverables as provided by the attached RI/FS Statement of Work, for the development of the RI/FS. Respondents may propose

alternate deliverables and schedules, and the U.S. EPA Project Manager shall have discretion to approve or disapprove such proposals. All such work will be conducted in accordance with CERCLA, the NCP, U.S. EPA approvals and directions under this Consent Order, and U.S. EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05) and guidance referenced therein, and guidance referenced in the Statement of Work, as may be amended or modified by U.S. EPA. The general activities that Respondents are required to perform are identified below, followed by a list of deliverables. The tasks that Respondents must perform are described more fully in the Statement of Work and guidance referenced therein. The activities and deliverables identified below will be developed as provisions in the work plan and sampling and analysis plan, and will be submitted to U.S. EPA as provided. All work performed under this Consent Order will be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the work plan and sampling and analysis plan, as initially approved or modified by U.S. EPA, and as may be amended or modified by U.S. EPA from time to time. For the purposes of this Order, day means

calendar day unless otherwise noted in the Order.

A. Task I: Scoping

U.S. EPA, after consultation with Respondents, determines the Site-specific objectives of the RI/FS and devises a general management approach for the Site, as provided in the attached Statement of Work. Respondents will conduct the remainder of scoping activities as described in the attached Statement of Work and referenced guidance. At the conclusion of the project planning phase, Respondent will provide U.S. EPA and Ohio EPA with the following deliverables:

1. RI/FS Work Plan. Within ninety (90) days of the effective date of this Order, Respondents will submit to U.S. EPA (and provide a copy to Ohio EPA) a complete RI/FS work plan. If U.S. EPA disapproves of or requires revisions to the RI/FS work plan, in whole or in part, Respondents will amend and submit to U.S. EPA a revised work plan which is responsive to the directions in all U.S. EPA comments, within thirty (30) days of receiving U.S. EPA's comments.

2. Sampling and Analysis Plan. Within ninety (90) days of the effective date of this Order, Respondents will submit to U.S. EPA (and provide a copy to Ohio EPA) the sampling and analysis plan. This plan will consist of a field sampling plan (FSP) and a quality assurance project plan (QAPP), as described in the Statement of Work and guidances, including, without

limitation, "U.S. EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (U.S. EPA/600/R-98/018, February 1998), and "U.S. EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (U.S. EPA 240/B-01/003, March 2001). If U.S. EPA disapproves or requires revisions to the sampling and analysis plan, in whole or in part, Respondents will amend and submit to U.S. EPA a revised sampling and analysis plan which is responsive to the directions in all U.S. EPA comments, within thirty (30) days of receiving U.S. EPA's comments.

3. Site Health and Safety Plan. Within ninety (90) days of the effective date of this Order, Respondents will submit to U.S. EPA (and provide a copy to Ohio EPA) the Site health and safety plan.

Following approval or modification by U.S. EPA, the RI/FS work plan and the sampling and analysis plan are incorporated by reference herein.

B. Task II: Community Relations Plan

U.S. EPA will prepare a community relations plan, in accordance with U.S. EPA guidance and the NCP. Respondents will provide information as needed for supporting U.S. EPA's community relations programs.

C. Task III: Site Characterization Following U.S. EPA approval or modification of the work plan and sampling and analysis plan, Respondents will implement the provisions of

these plans to characterize the Site. Respondents will complete Site characterization within six (6) months of U.S. EPA approval or modification of the work plan and sampling and analysis plan. Respondents will provide U.S. EPA with validated analytical data within sixty (60) days of each sampling activity, in an electronic format: <http://www.epa.gov/region5superfund/edman> provides instructions. showing the location, medium and results. Within seven (7) days of completion of field activities, Respondents will notify U.S. EPA in writing. During Site characterization, Respondents will provide U.S. EPA with a Preliminary Site Characterization Summary. Within ninety (90) days of completion of the field sampling and analysis, as specified in the work plan, Respondents will submit a Site characterization summary (including a Site sample location map showing the location and depth of all samples taken) to U.S. EPA.

D. Task IV: Draft Remedial Investigation Report Within 180 days of the day U.S. EPA receives Respondent's Site characterization summary, Respondents will submit a draft remedial investigation report consistent with the Statement of Work, work plan and sampling and analysis plan. If U.S. EPA disapproves or requires revisions to the remedial investigation report, in whole or in part, Respondents will amend and submit to U.S. EPA a revised remedial investigation

report which is responsive to the directions in all U.S. EPA comments, within thirty (30) days of receiving U.S. EPA's comments.

E. Task V: Treatability Studies.

Based on the information currently available, it is not certain that remediation of the Site will require the performance of treatability studies; however, in the event that U.S. EPA determines that treatability studies are necessary, Respondents will conduct treatability studies, except where Respondents can demonstrate to U.S. EPA's satisfaction that they are not needed. The major components of the treatability studies will include determination of the need for and scope of studies, the design of the studies, and the completion of the studies, as described in the Statement of Work. During the performance of any treatability studies that U.S. EPA determines are necessary for this Site, Respondents will provide U.S. EPA with the following deliverables:

1. Identification of Candidate Technologies

Memorandum. This memorandum will be submitted within 180 days of the effective date of this Order. If U.S. EPA disapproves of or requires revisions to the technical memorandum identifying candidate technologies, in whole or in part, Respondents will amend and submit to U.S. EPA a revised technical memorandum identifying candidate

technologies which is responsive to the directions in all U.S. EPA comments, within thirty (30) days of receiving U.S. EPA's comments.

2. Treatability Testing Statement of Work. If U.S. EPA determines that treatability testing is required, within twenty-one (21) days thereafter [or as specified by U.S. EPA], Respondents will submit a treatability testing statement of work.

3. Treatability Testing Work Plan. Within thirty (30) days of submission of the treatability testing statement of work, Respondents will submit a treatability testing work plan, including a schedule. If U.S. EPA disapproves of or requires revisions to the treatability testing work plan, in whole or in part, Respondents will amend and submit to U.S. EPA a revised treatability testing work plan which is responsive to the directions in all U.S. EPA comments, within twenty-one (21) days of receiving U.S. EPA's comments.

4. Treatability Study Sampling and Analysis Plan. Within sixty (60) days of the identification of the need for a separate or revised QAPP or FSP, Respondents will submit a treatability study sampling and analysis plan. If U.S. EPA disapproves of or requires revisions to the treatability study sampling and analysis plan, in whole

or in part, Respondents will amend and submit to U.S. EPA a revised treatability study sampling and analysis plan which is responsive to the directions in all U.S. EPA comments, within twenty-one (21) days of receiving U.S. EPA's comments.

5. Treatability Study Site Health and Safety Plan. Within sixty (60) days of the identification of the need for a revised health and safety plan, Respondents will submit a treatability study Site health and safety plan.

6. Treatability Study Evaluation Report. Within thirty (30) days of completion of any treatability testing, Respondents will submit a treatability study evaluation report as provided in the Statement of Work and work plan. If U.S. EPA disapproves of or requires revisions to the treatability study report, in whole or in part, Respondents will amend and submit to U.S. EPA a revised treatability study report which is responsive to the directions in all U.S. EPA comments, within twenty-one (21) days of receiving U.S. EPA's comments.

F. Task VI: Development and Screening of Alternatives.

Respondents will develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the Statement of Work and work plan. During the development and

screening of alternatives, Respondents will provide U.S. EPA with the following deliverables:

1. Memorandum on Remedial Action Objectives. Within ninety (90) days of completion of the field sampling and analysis, as specified in the work plan, Respondents will submit a memorandum on remedial action objectives to U.S. EPA.
2. Memorandum on Development and Preliminary Screening of Alternatives, Assembled Alternatives Screening Results and Final Screening. Within ninety (90) days of completion of the field sampling and analysis, as specified in the work plan, the Respondents will submit a memorandum summarizing the development and screening of remedial alternatives, including an alternatives array document as described in the Statement of Work.

G. Task VII: Detailed Analysis of Alternatives. Respondents will conduct a detailed analysis of remedial alternatives, as described in the Statement of Work and work plan. During the detailed analysis of alternatives, Respondents will provide U.S. EPA with the following deliverables and presentation:

1. Report on Comparative Analysis and Presentation to U.S. EPA. Within ninety (90) days of submission of a memorandum on the development and screening of remedial alternatives, Respondents will submit a report on

comparative analysis to U.S. EPA summarizing the results of the comparative analysis performed between the remedial alternatives. If U.S. EPA disapproves of or requires revisions to the report on comparative analysis, Respondent(s) will amend and submit to U.S. EPA a revised report on comparative analysis which is responsive to the directions in all U.S. EPA comments, within thirty days of receiving U.S. EPA's comments. Within three (3) weeks of submitting the original report on comparative analysis, Respondents will present to U.S. EPA a summary of the findings of the remedial investigation and remedial action objectives, and present the results of the nine (9) criteria evaluation and comparative analysis, as described in the Statement of Work.

2. Draft Feasibility Study Report. Within ninety (90) days of the presentation to U.S. EPA, Respondents will submit a draft feasibility study report which reflects the findings in the baseline risk assessment. Respondents will refer to Table 6-5 of the RI/FS Guidance for report content and format. If U.S. EPA disapproves of or requires revisions to the draft feasibility study report in whole or in part, Respondents will amend and submit to U.S. EPA a revised

feasibility study report which is responsive to the directions in all U.S. EPA comments, within thirty (30)days of receiving U.S. EPA's comments. The report as amended, and the administrative record, will provide the basis for the proposed plan under CERCLA §§ 113(k) and 117(a), 42 U.S.C. §§ 9613 (k), 9617(a) and will document the development and analysis of remedial alternatives.

65. U.S. EPA reserves the right to comment on, modify and direct changes for all deliverables. At U.S. EPA's discretion, Respondents must fully correct all identified deficiencies and incorporate and integrate all information and comments supplied by U.S. EPA either in subsequent or resubmitted deliverables.

66. Respondents will not proceed further with any subsequent activities or tasks until receiving U.S. EPA approval for the following deliverables: RI/FS work plan and sampling and analysis plan, draft remedial investigation report, treatability testing work plan and sampling and analysis plan, and draft feasibility study report. While awaiting U.S. EPA approval on these deliverables, Respondents will proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order as revised or amended

by the written consent of the Parties.

67. Upon receipt of the draft FS report, U.S. EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed.

68. For all remaining deliverables not enumerated above in paragraph 66, Respondents will proceed with all subsequent tasks, activities and deliverables without awaiting U.S. EPA approval on the submitted deliverable. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

69. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of U.S. EPA comments, if U.S. EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect U.S. EPA's directions for changes, U.S. EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.

70. In the event that U.S. EPA takes over some of the tasks, but not the preparation of the RI/FS, Respondents will incorporate and integrate information supplied by U.S. EPA into

the final RI/FS report.

71. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period(s), nor the absence of comments, will be construed as approval by U.S. EPA. Whether or not U.S. EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to U.S. EPA.

72. Respondents will, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to U.S. EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments will not apply to any such off-site shipments when the total volume of such shipments will not exceed ten (10) cubic yards.

(a) The notification of any off-Site shipment of hazardous substances will be in writing, and will include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents will notify the receiving state of major changes in

the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state that is to receive any shipment of hazardous substances will be determined by Respondents following the award of the contract for the RI/FS. Respondent(s) will provide all relevant information, including information under the categories noted in paragraph 72(a) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

IX. BASELINE RISK ASSESSMENT

73. Respondents will perform the baseline risk assessment as part of the remedial investigation. The major components of the baseline risk assessment include constituent identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization. Respondents will provide, after review of all the pertinent and available Site characterization information and data, sufficient information concerning the baseline risks such that they can assess this information, along with the Remedial Action Objectives. This information submittal to the U.S. EPA by Respondents will be included in the Draft Remedial Investigation

Report in the form of two or more baseline risk assessment memoranda. One memorandum will include a list of the chemicals of concern for human health and ecological effects and the corresponding toxicity values. The second memorandum will include a list of the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that U.S. EPA plans to use in the baseline risk assessment. The public may comment on these memoranda. However, the U.S. EPA is obligated to respond only to significant comments on the Record of Decision that are submitted during the formal public comment period. After considering any significant comments received, U.S. EPA will direct the Respondents to prepare a baseline risk assessment report based on the data collected by the Respondents during the Site characterization. U.S. EPA will release this report to the public at the same time it releases the final RI report. Both reports will be put into the administrative record for the Site. U.S. EPA will respond to all significant comments on the memoranda or the baseline risk assessment that are resubmitted during the formal comment period in the Responsiveness Summary of the Record of Decision.

X. MODIFICATION OF THE WORK PLAN

74. If at any time during the RI/FS process,

Respondents identify a need for additional data, a memorandum documenting the need for additional data will be submitted to the U.S. EPA Project Coordinator within twenty (20) days of identification. U.S. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

75. In the event that Respondents discover that conditions at or emanating from the Site pose an immediate threat to human health or welfare or the environment, Respondents will notify U.S. EPA and the State immediately. In the event of unanticipated or changed circumstances at the Site, Respondents will notify the U.S. EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that U.S. EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the work plan, U.S. EPA will modify or amend the work plan in writing accordingly. Respondents will perform the work plan as modified or amended.

76. U.S. EPA may determine that, in addition to tasks defined in the initially approved work plan, other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the Statement of Work for this RI/FS. U.S. EPA may require that the Respondent perform these response actions

in addition to those required by the initially approved work plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. Respondents will confirm their willingness to perform the additional work in writing to U.S. EPA within ten (10) days of receipt of the U.S. EPA request or Respondents will invoke dispute resolution. Subject to U.S. EPA resolution of any dispute, Respondents will implement the additional tasks which U.S. EPA determines are necessary. The additional work will be completed according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the work plan or written work plan supplement. U.S. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents later, and/or to seek any other appropriate relief.

XI. QUALITY ASSURANCE

77. Respondents will assure that work performed, samples taken and analyses conducted conform to the requirements of the Statement of Work, the QAPP and guidance identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that

complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

**XII. FINAL RI/FS, PROPOSED, PLAN, PUBLIC COMMENT
RECORD OF DECISION, ADMINISTRATIVE RECORD**

78. U.S. EPA retains the responsibility for the release to the public of the RI/FS report. U.S. EPA retains responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP.

79. Respondents will provide U.S. EPA with the final RI/FS report. If U.S. EPA decides to make substantive changes to the final RI/FS report, prior to its release to the public, U.S. EPA will provide Respondent advance notice of these changes before releasing the report. U.S. EPA will also provide Respondents with a copy of the final RI/FS report (if it differs substantively from that submitted by Respondents), proposed plan and record of decision.

80. U.S. EPA will maintain the administrative record file for selection of the remedial action in accordance with the requirements of the NCP. Respondents must submit to U.S. EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Respondents will provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Respondents must additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At U.S. EPA's discretion, Respondents may establish a community information repository at or near the Site, to house one copy of the administrative record.

XIII. PROGRESS REPORTS AND MEETINGS

81. Respondents will make presentations at, and participate in, meetings at the request of U.S. EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled as reasonably requested by U.S. EPA.

82. In addition to the deliverables set forth in this Order, Respondents will provide to U.S. EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports will (1) describe the actions which have been taken to comply with this Consent Order during the reporting period, (2) include all validated results of sampling and tests and all other evaluated and validated data received by the Respondents, (3) describe work planned for the next two months with schedules relating such work to the overall project schedule for RI/FS completion and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays. During the course of the RI/FS, Respondent may request, and U.S. EPA's Project Manager shall have discretion to grant, changes in the length of the reporting period.

XIV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

83. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Consent Order, will be submitted to U.S. EPA in the subsequent monthly progress report as described in Section XIII of this Order.

U.S. EPA will make available to the Respondents validated data generated by U.S. EPA unless it is exempt from disclosure by any federal or state law or regulation.

84. Respondents will orally notify U.S. EPA at least fifteen (15) days prior to conducting significant field events as described in the Statement of Work, work plan or sampling and analysis plan. At U.S. EPA's oral or written request, or the request of U.S. EPA's oversight assistant, Respondents will allow split or duplicate samples to be taken by U.S. EPA (and its authorized representatives) of any samples collected by the Respondents in implementing this Consent Order. All split samples of Respondents will be analyzed by the methods identified in the QAPP.

85. At all reasonable times, U.S. EPA and its authorized representatives will have the authority to enter and freely move about all property at the Site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their contractor pursuant to this order; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting tests as U.S. EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and

verifying the data submitted to U.S. EPA by the Respondents. The Respondents will allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order.

A. The Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged.

B. No claim of privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information

evidencing conditions at or around the Site. Nothing herein will be interpreted as limiting or affecting U.S. EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph will comply with all approved health and safety plans.

86. The Respondents may assert a claim of business confidentiality covering part or all of the information submitted to U.S. EPA pursuant to the terms of this Consent Order under 40 C.F.R. Part 2, Subpart B, provided such claim is allowed by § 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim will be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by U.S. EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to U.S. EPA, it may be made available to the public by U.S. EPA or the State without further notice to the Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

87. In entering into this Order, Respondents waive any objections to any data gathered, generated, or evaluated after the execution of this Consent Order by U.S. EPA, the State or Respondents in the performance or oversight of the work performed under this Consent Order that has been verified

according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any U.S. EPA-approved work plans or sampling and analysis plans. If Respondents object to any other data relating to the RI/FS, Respondents will submit to U.S. EPA a report that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to U.S. EPA within fifteen (15) days of the progress report containing the data.

88. If the Site, or any off-site area that is to be used for access or is within the scope of the RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order, Respondents will obtain, or use their best efforts to obtain, Site access agreements from the present owner(s) within sixty (60) days of the effective date of this Consent Order. Such agreements will provide access for U.S. EPA, its contractors and oversight officials, the State and its contractors, and the Respondents or their authorized representatives, and such agreements will specify that Respondents are not U.S. EPA's representatives with respect to liability associated with Site activities. Copies of such agreements will be provided to U.S. EPA prior to Respondents' initiation of field activities. Respondents' best efforts will include providing reasonable compensation to any off-site

property owner. If access agreements are not obtained within the time referenced above, Respondents will immediately notify U.S. EPA of their failure to obtain access. U.S. EPA may obtain access for the Respondents, perform those tasks or activities with U.S. EPA contractors, or terminate the Consent Order in the event that Respondents cannot obtain access agreements. In the event that U.S. EPA performs those tasks or activities with U.S. EPA contractors and does not terminate the Consent Order, Respondents will perform all other activities not requiring access to that location, and will reimburse U.S. EPA for all costs incurred in performing such activities. Respondents additionally will integrate the results of any such tasks undertaken by U.S. EPA into their reports and deliverables. Furthermore, the Respondents agree to indemnify the U.S. Government as specified in Section XXVI of this Order. Respondents also will reimburse U.S. EPA for all costs and attorney fees incurred by the United States to obtain access for the Respondents pursuant to paragraph 112.

XV. DESIGNATED PROJECT COORDINATORS

89. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, will be sent by certified mail, return receipt requested, or by overnight delivery service, to the

following addressees or to any other addressees which the Respondents and U.S. EPA designate in writing:

(a) Documents to be submitted to U.S. EPA should be sent in triplicate to:

Gwendolyn Massenburg,
Remedial Project Manager
US U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

(b) Documents to be submitted to the Respondents should be sent to:

Douglas A. McWilliams, Chairperson
CRS Site Group
c/o Squire, Sanders & Dempsey, L.L.P.
4900 Key Tower
127 Public Square
Cleveland, OH 44114-1304
dmcwilliams@ssd.com

90. On or before the effective date of this Consent Order, U.S. EPA and the Respondents will each designate their own Project Coordinator. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and U.S. EPA will be directed to the Project Coordinator by mail, with copies to such other persons as U.S. EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order. For some communications, including comments, approvals and other correspondence, but not the

document types listed in paragraph 89, electronic mail may be appropriate. The Project Coordinators may agree which communications are appropriately sent by electronic mail.

91. U.S. EPA and the Respondents each have the right to change their respective Project Coordinator. The other party must be notified in writing at least ten (10) days prior to the change.

92. U.S. EPA's Project Coordinator will have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, U.S. EPA's Project Coordinator will have the authority, consistent with the NCP, to halt any work required by this Consent Order, and to take any necessary response action when she/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the U.S. EPA Project Coordinator from the area under study pursuant to this Consent Order will not be cause for the stoppage or delay of work.

93. U.S. EPA will arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe work and make inquiries in the absence of U.S. EPA, but is not authorized to modify the work plan.

XVI. OTHER APPLICABLE LAWS

94. Respondents will comply with all laws that are applicable when performing the RI/FS. No local, state, or federal permit will be required for any portion of any action conducted entirely on-site, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621.

XVII. RECORD PRESERVATION

95. All records and documents in U.S. EPA's and Respondents' possession that relate in any way to the Site will be preserved during the conduct of this Consent Order and for a minimum of 10 years after commencement of construction of any remedial action. The Respondents will acquire and retain copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, the Respondents will notify U.S. EPA at least ninety (90) days before the documents are scheduled to be destroyed. If U.S. EPA requests that the documents be saved, the Respondents will, at no cost to U.S. EPA, give U.S. EPA the documents or copies of the documents. If the Respondents assert a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: (1) the title of the document, record, or information; (2) the date

of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Order shall be withheld on the grounds that they are privileged.

XVIII. DISPUTE RESOLUTION

96. Any disputes concerning any activities or deliverables required under this Order will be resolved as follows: If the Respondents object to any U.S. EPA action taken or decision reached pursuant to this Order, including, without limitation, billings for oversight costs or disapproval or required revisions or modifications of any plan or report, Respondents will notify U.S. EPA's Project Coordinator in writing of their objections within ten (10) days of receipt of the notice of the action, decision, disapproval, modification, or requirement. Respondents' written objections will define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested, or by overnight delivery service. U.S. EPA and the Respondents then have an additional fourteen (14) days to reach agreement. If an

agreement is not reached within fourteen (14) days, Respondents may request a determination by U.S. EPA's Director, Superfund Division. The Director's determination is U.S. EPA's final decision. Respondents will proceed in accordance with U.S. EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with U.S. EPA's final decision, U.S. EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

97. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in the work plan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not automatically stay stipulated penalties under this Order; however, if Respondents prevail in dispute resolution no stipulated penalties shall be due.

XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES

98. For each day that the Respondents fail to complete a deliverable in a timely manner or fail to produce a deliverable of acceptable quality, or otherwise fail to perform

in accordance with the requirements of this Consent Order, Respondents agree to pay and to be held liable for payment of stipulated penalties as set forth in this Section of this Consent Order. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties will continue to accrue until a satisfactory deliverable is produced. U.S. EPA will provide written notice for violations that are not based on timeliness; nevertheless, penalties will accrue from the day a violation commences. Payment will be due within thirty (30) days of receipt of a demand letter from U.S. EPA specifying the amount of stipulated penalties due. U.S. EPA, in its sole discretion, may waive any stipulated penalties that accrue.

99. Respondents will pay interest on the unpaid balance, which will begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents will further pay a handling charge of 1 percent, to be assessed at the end of each 31 day period, at a rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents will further pay and a six percent (6%) per annum penalty, to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

100. Respondents must make all payments by certified check payable to "Hazardous Substances Superfund" and forward the check to:

U.S. Environmental Protection Agency, Region 5
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Checks must identify the name of the Site, the Site identification number, the account number, and the title of this Order. A copy of the check and/or transmittal letter must be forwarded to the U.S. EPA Project Coordinator.

101. For the following major deliverables, stipulated penalties will accrue in the amount of \$500 per day, per violation, for the first seven days (7) of noncompliance; \$1,000 per day, per violation, for the 8th through 14th day of noncompliance; \$2,000 per day, per violation, for the 15th day through the 30th day; and \$5,000 per day per violation for all violations lasting beyond thirty (30) days.

- 1) An original and any revised work plan.
- 2) An original and any revised sampling and analysis plan.
- 3) An original and any revised remedial investigation report.
- 4) An original and any revised treatability testing work plan, if required.
- 5) An original and any revised treatability study

sampling and analysis plan, if required.

- 6) An original and any revised feasibility study report.

102. For the following interim deliverables, if required, stipulated penalties will accrue in the amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; \$1,000 per day, per violation, for the 15th day through the 30th day of noncompliance; and \$2,500 per day, per violation for all violations lasting beyond 30 days.

- 1) Technical memorandum on modeling of Site characteristics.
- 2) Preliminary Site characterization summary.
- 3) Summary of RI data.
- 4) Identification of candidate technologies memorandum.
- 5) Treatability testing statement of work (if required).
- 6) Treatability study evaluation report (if required).
- 7) Memorandum on remedial action objectives.
- 8) Memoranda on development and preliminary screening of alternatives, assembled alternatives screening results, and final screening.
- 9) Comparative analysis report.

103. For the monthly progress reports, stipulated penalties will accrue in the amount of \$100 per day, per violation, for the first week of noncompliance; \$200 per day, per violation, for the 8th through 14th day of noncompliance; \$500 per day, per violation, for the 15th day through the 30th day; and \$1,000 per day, per violation, for all violations lasting beyond thirty (30) days.

104. Respondents may dispute U.S. EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVII herein. Penalties will accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties will be due to U.S. EPA within thirty (30) days of resolution of the dispute. If Respondents prevail upon resolution, no penalties will be paid.

105. In the event that U.S. EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable will cease to accrue on the date of such decision by U.S. EPA.

106. The stipulated penalties provisions do not preclude U.S. EPA from pursuing any other remedies or sanctions which are available to U.S. EPA because of the Respondents' failure to comply with this Consent Order, including but not

limited to conduct of all or part of the RI/FS by U.S. EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Consent Order.

XX. FORCE MAJEURE

107. "Force majeure", for purposes of this Consent Order, is defined as any event arising from causes entirely beyond the control of the Respondents and of any entity controlled by Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that the Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

108. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or

not caused by a force majeure event, Respondents will notify by telephone the Remedial Project Manager or, in his or her absence, the Director of the Superfund Division, U.S. EPA Region 5, within 48 hours of when the Respondents knew or should have known that the event might cause a delay. Within five (5) business days thereafter, Respondents will provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondents will exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements will preclude Respondents from asserting any claim of force majeure.

109. If U.S. EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event will be extended by agreement of the parties, pursuant to section XXVI of this Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force

majeure event will not, of itself, extend the time for performance of any subsequent obligation.

110. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue will be subject to the dispute resolution procedures set forth in Section XVII of this Order. In any such proceeding, to qualify for a force majeure defense, Respondents will have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph 108.

111. Should Respondents carry the burden set forth in paragraph 110, the delay at issue will be deemed not to be a violation of the affected obligation of this Consent Order, and therefore, any stipulated penalties assessed for such a delay would be waived by U.S. EPA.

XXI. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

112. Following the issuance of this Consent Order, EPA

shall submit to the Respondents on a periodic basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this RI/FS. Response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondents' implementation of the requirements of this Order and activities performed by the government as part of the RI/FS and community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, costs of performing baseline risk assessment, and costs of redoing any of Respondents' tasks. Any necessary summaries, including, but not limited to EPA's certified Agency Financial Management Systems summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as basis for payment demands.

113. Respondent(s) shall, within 30 days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of:

the date payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in section 107(a) of CERCLA.

114. Checks should be made payable to the Hazardous Substances Superfund and should include the name of the site, the site identification number, the account number and the title of this Order. Checks should be forwarded to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

115. Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondents will identify any contested costs and the basis of their objection. All undisputed costs will be remitted by Respondents in accordance with the schedule set forth above. Disputed costs will be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing a U.S. EPA accounting error or the inclusion of costs outside the scope of this Consent Order.

116. A copy of the check must be sent simultaneously to the U.S. EPA Project Coordinator.

XXII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

117. U.S. EPA reserves the right to bring an action against any PRP identified at this Site including, but not limited to, the Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607(a), for recovery of all response costs incurred by the United States at the Site that are not reimbursed by the Respondents and not reimbursed by other non-Respondent PRPs at this Site, including but not limited to past costs, oversight costs, any costs incurred in the event that U.S. EPA performs the RI/FS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site.

118. U.S. EPA reserves the right to bring an action against Respondents to enforce the cost reimbursement requirements of this Consent Order, to collect stipulated penalties assessed and demanded, if any, pursuant to Section XIX of this Consent Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

119. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Consent Order will affect U.S. EPA's removal authority or U.S. EPA's response or enforcement authorities.

120. Following satisfaction of the requirements of this Consent Order, Respondents will have resolved their liability to

U.S. EPA for the work performed by Respondents pursuant to this Consent Order. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

XXIII. CONTRIBUTION PROTECTION

121. With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes Parties to this Order from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. DISCLAIMER

122. By signing this Consent Order and taking actions under this Order, the Respondents do not admit U.S. EPA's Findings of Fact or Conclusions of Law and Determinations; however, Respondents agree not to contest those Findings,

Conclusions and Determinations in any action brought by the United States, including U.S. EPA, to enforce the terms of this Order. Furthermore, the participation of the Respondents in this Order will not be considered an admission of liability and is not admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including U.S. EPA, to enforce this Consent Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, the Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including U.S. EPA, to enforce its terms.

XXV. OTHER CLAIMS

123. In entering into this Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA. Respondents also waive any right to present a claim under Section 111 or 112 of CERCLA. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA. Respondents further waive all other statutory and common law claims against U.S. EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the RI/FS.

124. Nothing in this Order will constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

125. Respondents will bear their own costs and attorneys fees.

XXVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

126. U.S. EPA acknowledges that Respondents have demonstrated by publicly available financial statements that they have the financial ability to perform the work and any other obligations required under this Consent Order, including a margin for cost overruns.

127. (a) Prior to commencement of any work under this Order, Respondents will secure, and will maintain in force for the duration of this Order, Comprehensive General Liability ("CGL") and automobile insurance, with limits of \$2 million dollars, combined single limit, naming as insured the United States. The CGL insurance will include Contractual Liability

Insurance in the amount of \$1,000,000 per occurrence, and Excess Liability Insurance in the amount of \$5 million per occurrence.

(b) Respondents will also secure, and maintain in force for the duration of this Order the following:

i. Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per occurrence.

ii. Sudden and Accidental Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

(c) For the duration of this Order, Respondents will satisfy, or will ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Order.

(d) If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Respondent need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

(e) Prior to commencement of any work under this

Order, and annually thereafter on the anniversary of the effective date of this Order, Respondents will provide to U.S. EPA certificates of such insurance and a copy of each insurance policy.

128. At least seven (7) days prior to commencing any work under this Consent Order, Respondents will certify to U.S. EPA that the required insurance has been obtained by that contractor.

129. The Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Consent Order. The United States Government or any agency or authorized representative thereof will not be held as a party to any contract entered into by Respondents in carrying out activities under this Consent Order.

XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

130. The effective date of this Consent Order will be the date it is signed by U.S. EPA.

131. This Consent Order may be amended by mutual

agreement of U.S. EPA and Respondents. Amendments will be in writing and will not be effective if signed by someone who does not have the authority to sign amendments to the Consent Order.

132. No informal advice, guidance, suggestions, or comments by U.S. EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by U.S. EPA, incorporated into this Order.

XXVIII. TERMINATION AND SATISFACTION

133. This Consent Order will terminate when the Respondents demonstrate in writing and certify to the satisfaction of U.S. EPA that all activities required under this Consent Order, including any additional work, payment of response and oversight costs incurred by the U.S. Government with respect to this RI/FS, and any stipulated penalties demanded by U.S. EPA, have been performed and U.S. EPA has approved the certification. This notice will not, however, terminate Respondents' obligation to comply with Sections XVI, XXI, and XXII of this Consent Order.

134. The certification will be signed by a responsible official representing each Respondent. Each representative will make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

IN RE: CHEMICAL RECOVERY SYSTEMS, INC, ELYRIA OHIO

DOCKET NO.:

Administrative Order on Consent
For Remedial Investigation/Feasibility Study

BY: _____ DATE: _____

William E. Munro, Director

Superfund Division, Region 5

U.S. Environmental Protection Agency

IN RE: CHEMICAL RECOVERY SYSTEMS, INC, ELYRIA OHIO

DOCKET NO.:

Administrative Order on Consent
For Remedial Investigation/Feasibility Study

BY: _____ DATE: _____

Title

BY: _____ DATE: _____

Title